

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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**FISCAL IMPACT STATEMENT**

**LS 6644**

**BILL NUMBER: SB 317**

**NOTE PREPARED: Jan 7, 2008**

**BILL AMENDED:**

**SUBJECT: Bail.**

**FIRST AUTHOR: Sen. Waterman**

**FIRST SPONSOR:**

**BILL STATUS: As Introduced**

**FUNDS AFFECTED:      GENERAL  
                                 DEDICATED  
                                 FEDERAL**

**IMPACT: Local**

**Summary of Legislation:** This bill has the following provisions:

- A. It makes changes to the Indiana bail law concerning: (1) credit card service fee payments; (2) notices to sureties and bond agents; (3) circumstances under which a cause is determined; (4) failure to appear; and (5) substitution of bail for deposits.
- B. It specifies that a court may require a defendant admitted to bail to execute a bail bond written by an insurer (instead of being executed with sufficient solvent sureties).
- C. It removes a provision that allows a court to admit a defendant to bail by requiring the defendant to post a real estate bond.
- D. It provides that if a person charged with a crime under IC 35-42 (offenses against the person) is admitted to bail, the person: (1) shall be admitted to bail by executing a bail bond written by an insurer, depositing cash or securities in an amount equal to the bail, or executing a bond secured by certain real estate; and (2) may not be admitted to bail by executing a bail bond by depositing cash or securities in an amount not less than 10% of the bail.

**Effective Date:** July 1, 2008.

**Explanation of State Expenditures:**

**Explanation of State Revenues:**

**Explanation of Local Expenditures:** *Person Charged with a Crime under IC 35-42 (Offenses Against the Person)* – The category “Offenses Against the Person” includes both felonies and misdemeanors. Defendants who are accused of committing either a felony or misdemeanor involving a crime against a person would not

be able to be released from jail prior to trial if they cannot secure a surety agency who would post bail or pay either a full cash bond or a property bond.

Any effect on county operations will depend on the following factors:

- Each county's jail population and current capacity.
- The current policies that each court with a criminal jurisdiction has concerning pretrial release.
- The number of felons and misdemeanants who are being detained.
- The financial status of the criminal defendants.

County Jail Population – Depending on the number of criminal defendants, their residential status, and their ability to pay any additional fees that this bill requires, this bill could increase the number of criminal defendants who are held in county jails awaiting trial. The percentage of criminal defendants who are unable to pay the higher fees and be required to remain in jail prior to trial is not known. The average cost per day is approximately \$44.

In CY 2005 and 2006, the Department of Correction (DOC) reports the number of persons in county jails on a one-day count who are a felony offender sentenced to DOC as a felon and serving time in a county jail, sentenced as a misdemeanor on work release, or awaiting trial. Using this table, LSA estimates that the number of offenders who are in jail and awaiting trial was almost 75% of the total jail population in CY 2006.

| <b>Inmates Identified in County Jails by DOC Jail Inspectors</b> |                |        |                |        |
|------------------------------------------------------------------|----------------|--------|----------------|--------|
| <u>Calendar Year</u>                                             | <u>CY 2005</u> |        | <u>CY 2006</u> |        |
| Felony Offenders Under DOC Contract                              | 1,808          | 11.6%  | 1,439          | 9.1%   |
| Sentenced as Misdemeanant                                        | 2,755          | 17.7%  | 2,563          | 16.1%  |
| Offenders on Work Release                                        | 323            | 2.1%   | 409            | 2.6%   |
| Criminal Defendants Awaiting Trial                               | 10,991         | 70.7%  | 11,889         | 74.8%  |
| Offenders in County Jails                                        | 15,554         | 100.0% | 15,891         | 100.0% |
| Source: DOC Annual Inspection of Jails.                          |                |        |                |        |

Local Court Rules and Policies – LSA examined the local rules of circuit and superior courts in 20 other counties that had posted their pretrial release policies on the [Indiana Supreme Court Website](#). The policies that these courts have vary and the effect that this bill would have on jails in these counties will vary as well. Generally, defendants who are arrested for murder will be detained in jail until the completion of the trial. For Class D felons and misdemeanants, counties will allow for pretrial releases either with a reduced bail amount, a 10% cash bond that is deposited with the clerk of court, or with no bail depending on the crime and the defendant's criminal history and ties to the community. As examples, Clay, Delaware, and Elkhart Counties all permit the pretrial release of defendants under the conditions mentioned. In contrast, Johnson County requires bonding by surety agents for all defendants.

Defendants Awaiting Trial Who Were Committed to DOC – LSA found no data about criminal defendants who awaited trial and remained in jail compared to the number of defendants who were released from prison. However, DOC does report on the number of offenders who were committed to DOC facilities and whether they received a jail term credit. In FY 2007, 92% of offenders who were convicted of a crime against a person and committed to DOC had a jail term credit, which means that they had been detained in jail prior to trial and later committed to DOC for a specific number of days. The average length of time that these

offenders reported receiving in jail credit ranged from 70 days for Class D felons to almost 460 days for offenders convicted of murder.

| <b>DOC Offenders Committed in FY 2007<br/>for Crime Against a Person with Average Jail Credit</b> |                            |                 |                          |                            |         |
|---------------------------------------------------------------------------------------------------|----------------------------|-----------------|--------------------------|----------------------------|---------|
| Felony Level                                                                                      | Offenders with Jail Credit | Total Offenders | Percent with Jail Credit | Number of Jail Credit Days |         |
|                                                                                                   |                            |                 |                          | Median                     | Average |
| Murder                                                                                            | 85                         | 90              | 94%                      | 419.5                      | 461.1   |
| Class A                                                                                           | 170                        | 176             | 97%                      | 249.0                      | 297.2   |
| Class B                                                                                           | 750                        | 807             | 93%                      | 181.1                      | 201.7   |
| Class C                                                                                           | 810                        | 889             | 91%                      | 153.3                      | 145.7   |
| Class D                                                                                           | 619                        | 692             | 89%                      | 70.0                       | 70.4    |
| Total                                                                                             | 2434                       | 2654            | 92%                      |                            |         |

Misdemeanor Defendants – LSA could find no data on the number of persons who are detained in jail for a misdemeanor under IC 35-42. If courts permit most of these defendants to use the 10% cash bond for pretrial release and these defendants cannot afford to pay a surety agent or pay the full cash bond themselves, then the number of defendants awaiting trial who must remain in jail will increase. Court rules in several counties that LSA examined prohibit a defendant arrested for domestic battery from being released from jail prior to an initial hearing.

| <b>Misdemeanors under IC 35-42</b> |              |                                                                                                                                         |
|------------------------------------|--------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| <b>Statute</b>                     | <b>Class</b> | <b>Type of Crime</b>                                                                                                                    |
| IC 35-42-1-8                       | Class A      | Sale of Unapproved HIV Test Kit                                                                                                         |
| IC 35-42-1-9                       | Class B      | Reckless. Fail to Comply with Duty to Warn of Aids, HIV, Hep. B                                                                         |
| IC 35-42-2-1                       | Class B      | Battery                                                                                                                                 |
| IC 35-42-2-1                       | Class A      | Battery Causing Bodily Injury or Committed Against Law Enforcement Officer or Employee of Penal Facility or Juvenile Detention Facility |
| IC 35-42-2-1.3                     | Class A      | Domestic Battery                                                                                                                        |
| IC 35-42-2-2                       | Class B      | Criminal Recklessness                                                                                                                   |
| IC 35-42-2-2                       | Class A      | Criminal Recklessness with a Vehicle                                                                                                    |
| IC 35-42-2-4                       | Class B      | Obstruction of Traffic                                                                                                                  |
| IC 35-42-2-6                       | Class A      | Battery by Body Waste                                                                                                                   |
| IC 35-42-2-7                       | Class A      | Body Piercing a Minor,                                                                                                                  |
| IC 35-42-2-7                       | Class A      | Tattooing a Minor                                                                                                                       |
| IC 35-42-2-8                       | Class A      | Interference with Medical Services                                                                                                      |
| IC 35-42-3-4                       | Class C      | Interference with Custody                                                                                                               |
| IC 35-42-3-4                       | Class B      | Interference with Custody If Violation of a Court Order                                                                                 |

Background on Pre-Release Securities –

| Type of Release | Defendant Required to:                                                                              | Financial liability for failure to appear | Liable Party |
|-----------------|-----------------------------------------------------------------------------------------------------|-------------------------------------------|--------------|
| Surety Bond     | Pay fee (usually 10% of bail amount), plus collateral if required, to commercial bail agent.        | Full Bail Amount                          | Surety Agent |
| Deposit Bond    | Post deposit (usually 10% of bail amount) with court; a portion is refunded when case is completed. |                                           | Defendant    |
| Full Cash Bond  | Post full bail amount with court.                                                                   |                                           | Defendant    |
| Property Bond   | Post property title as collateral with court.                                                       |                                           | Defendant    |

**Explanation of Local Revenues:**

**State Agencies Affected:**

**Local Agencies Affected:** Trial Courts and Sheriffs.

**Information Sources:** [Indiana Supreme Court Website](#), DOC Offender Databases.

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